

United States Bankruptcy Court
WESTERN DISTRICT OF TENNESSEE

Administrative Procedures Manual- Exhibit to Standing Order, Miscell. No. 03-0006

AMENDED GUIDELINES FOR ELECTRONIC FILING

**NOTE THAT THESE AMENDED GUIDELINES CHANGE GUIDELINE 9 AND
ADD GUIDELINES 17-20**

Guideline No. 1 - Attorney Password

After completing training prescribed by the Court, attorneys admitted to practice before this Court, the U.S. Trustee, and his assistants, private trustees, and others as the Court deems appropriate, must register as filing users of the Court's Electronic Filing System by filling out and returning this Court's Application for Attorney Password (ECF Guidelines Form 1).

An attorney (or the staff person thereof) who exceeds the number of errors allowed to maintain the integrity of the Court docket, will be required to attend retraining. Recertification must occur within (60) sixty days of being notified. While waiting to be re-certified, documents will be filed by such attorney(s)(or the staff persons thereof) via diskette or CD in PDF format. If not re-certified within (60) sixty days of notification, an exception for not filing ECF should be sought from the Court.

No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an agent of the Filing User authorized to use such log in and password.

Guideline No. 2 - Limited Use Password

The following filers shall obtain a Limited Use Password by filing (ECF Guidelines Form 2):

- Attorneys appearing *pro hac vice*;
- Individuals authorized to prepare and file proofs of claim;
- Individuals authorized to file reaffirmation.
- Individuals authorized to file on behalf of interested parties.

No Limited User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an agent of the Filing User authorized to use such log

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in and password.

Guideline No. 3 - Method of Filing and Payment of Fees

- a) Fees may be paid by attorneys filing electronically by credit card in accordance with guidelines established by the U. S. Treasury Department, *when documents are filed electronically*. Payments made at the Clerk's Office will be as follows:
- | | | |
|---------|---|--|
| Memphis | - | business check, money order or cash |
| Jackson | - | business check or money orders <i>only</i> |
- b) Fees may be paid by business check, money order, or certified check and must be tendered to the Clerk's Office on the date of electronic filing or by the close of business the next day.

Guideline No. 4 - Verification of Petitions and Accompanying Papers

Debtors. The signatures of a debtor or joint debtors upon all verifications or unsworn declarations accompanying petitions, statements, schedules, and amendments thereto shall be made upon the documents filed electronically of record on the docket of the Court by means of a signature designation: "/s/(name of signatory)," or, if the declaration, verification, etc., is on diskette or CD in PDF format.

Creditors. The signatures of creditors upon the verification or unsworn declaration will be made upon the claims filed electronically of record on the docket or claims register by means of a signature designation: "/s/(name of signatory)," or on diskette or CD in PDF format.

Other Parties; Other Persons; Attorneys: The signatures of all other parties, persons, entities, and of all attorneys upon verifications, unsworn declarations, and affidavits shall be made upon the documents to be filed electronically of record on the docket of the court by means of a signature designation: "/s/(attorneys' name)," or on diskette or CD in PDF format.

Guideline No. 5 - Maintaining Original Documents Containing Original Signatures.

Attorneys practicing before this Court shall maintain all pages, of any petitions, statements, schedules, amendments, verifications, declarations, or affidavits that contain original signatures for five (5) years after the case or proceeding is closed. Original reaffirmation agreements may be maintained by the creditor or debtor at the parties' option.

Guideline No. 6 - Filing Proofs of Claim and Interests

Effective January 12, 2004, all proofs of claims, supporting documentation and interests must be filed in paper format with the Bankruptcy Clerk's Office. Effective October 1, 2004, Chapter 13 creditors will have the ability to file claims and interests electronically. All other creditors will be able to file electronically as soon as they are capable. Creditors may then apply to the Court for a limited use login ID. All electronic case files will include electronic claims registers. Claims and interests may be filed from remote locations at any date and time according to electronic procedures. Claims and interests may be filed at the Court Clerk's Office Monday through Friday, 8:30 a.m. to 4:30 p.m., except holidays, and posted closings, according to established procedures for filing electronic proofs of claim. In cases filed with over 1000 creditors, the Court may require the debtor to retain a claims agent.

Guideline No. 7 - Filing and Transmitting Documents

Initially, petitions, pleadings, and other documents may be filed at the U. S. Bankruptcy Court Clerk's Office, in either Memphis or Jackson, Monday through Friday, from 8:30 a.m. to 4:30 p.m., except holidays, and posted closings, for those persons filing documents by diskette/CD in PDF format, until such time as they may begin filing documents online. Documents may be filed electronically via the internet from remote locations twenty-four (24) hours per day, seven (7) days per week.

A pro se debtor(s), without legal representation, filing petitions, schedules, statements, amendments, pleadings, affidavits, and other documents which must contain original signatures, or which require verification under FED. R. BANKR. P. 1008, or an unsworn declaration as provided in 28 U.S.C. §1746, must submit these documents with full signature. These documents will be processed by the Clerk's Office, and shall be maintained according to procedures established by the Clerk of Court. The pro se debtor(s) will be responsible for appropriate noticing in accordance with Federal Rules of Bankruptcy Procedure or Local Bankruptcy Rules.

Guideline No. 8 - Certificate of Service

In the event that a document is not served by the Court, each entity electronically filing a pleading or other document must verify "Notice of Electronic Filing" to parties entitled to service or notice under the Federal Rules of Bankruptcy Procedure and the Local Rules of this court. The "Notice of Electronic Filing" must be transmitted by eMail, hand-delivered, facsimile, or by first-class mail postage prepaid. Electronic transmission of the "Notice of Electronic Filing" constitutes service or notice of the filed document, in accordance with Federal Rules of Bankruptcy Procedure or the Local Bankruptcy Rules.

Parties who have not consented in writing to electronic service of documents or notice must be served with a paper copy of any electronically filed pleading or other document. Filers may be

required in some instances to separately serve eMail notice to the U. S. Trustee, and/or Trustee according to FED. R. BANKR. P. 9034.

Guideline No. 9 - Proposed Orders: Method of Submission

A. Submission of Orders in Electronic Format. All orders proposed for consideration by the court shall be submitted in electronic format (by ECF, or on CD or diskette) with the conformed (“/s/ John Q Attorney”) or electronic facsimile signature of the person submitting the order. **The first four inches on the first page of such orders must be completely blank** to permit the addition of the judge’s signature and court seal. In addition, proposed orders shall contain a certificate of service listing the names and complete mailing addresses (including, as applicable, the telecopy number and/or e-mail address) of each person served with a copy of the proposed order indicating the date and manner of service.

B. Proposed Orders After No Response. If a proposed order results from no response being timely filed to a motion or application, the person submitting the order shall comply with Local Bankruptcy Rule 9013-1(b)(2) by appending a certificate to the proposed order substantially in the form of Local Form No. 8.

C. Proposed Consent Orders. If a proposed order results from an agreement of the parties, submission of a proposed order for consideration by the court shall constitute a representation that the person submitting the order has in fact obtained the consent of all persons affected by the order to the terms and form of the order.

D. Proposed Orders After a Hearing. If a proposed order results from a hearing, submission of the proposed order for consideration by the court shall constitute a representation that the person submitting the order has in fact obtained the approval of all persons effected by the order as to its form only, or if such approval has not been obtained, that the submitting person has complied with Local Bankruptcy Rule 9074-1(d)(2). The certificate required by Rule 9074-1(d)(2) shall be appended to the proposed order.

E. Judicial Signatures. When an order is ready for entry, a judge shall cause his or her electronic signature to be attached to the order. This may take the form of either a conformed signature or electronic facsimile signature. An order entered upon the docket with an electronic signature shall have the same force and effect as a paper order bearing the judge’s handwritten signature.

F. Service of Orders. Upon entry, the bankruptcy court clerk **may** serve (either electronically or by mail, or both) a copy of the order as finally entered upon those persons designated in the certificate of service, **or the clerk may serve an entered order upon the person filing the order with direction for that person to serve all others designated in the certificate of service.**

Guideline No. 10 - Confidentiality of Certain Information

Documents under seal must be filed on CD in PDF format. An electronic motion should be filed with the court, unless prohibited by law. Once the proposed Order is approved and filed by the court, a copy of the approved Order should be placed on top of the documents under seal and filed conventionally with the Court Clerk's Office. The document(s) will not become part of the electronic record. Upon instructions from the judge, the Clerk's Office will note the record(s) appropriately.

When captioning cases, (e.g., use of social security numbers) FED. R. BANKR. P. 1005 and any revisions shall apply.

Guide No. 11 - Transcripts

An electronic sound recording is made of any proceeding before a judge. This sound recording constitutes the "official court record," and remains the official court record even if a transcript is prepared therefrom. FED. R. BANKR. P. 5007(A) requires that a person preparing a transcript shall file a certified copy of that transcript with the Court. A transcript is not recorded, conventionally or electronically, to the case docket. Therefore the Court will retain said copy only for the purpose of transmission of record on appeal. (*i.e.*, if a party designates a transcript as part of the record on appeal, the Court will forward this copy to the appropriate appellate court. No additional copy need be supplied by the appellant/appellee.)

Guideline No. 12 - Attachments and Exhibits to Pleadings And to Proofs of Claims or Interests.

Filers should submit all exhibits and/or attachments to pleadings and proof of claims or interests in electronic format unless the attachment to the pleading or proof of claim or interests exceeds twenty (20) pages or if the attachment to the pleading or proof of claim or interests cannot be converted to electronic format.

If the attachment to the pleading or proof of claim or interests exceeds twenty (20) pages or cannot be converted to electronic format, then the filer shall attach a summary of exhibit or attachment (ECF Guidelines Form 3) only to the document that is filed electronically. **In this event, the filer shall retain the original of the exhibit until the finality of an order entered on the relevant pleading, the final allowance or disallowance of the proof of claim, or the specific order of the Court concerning the exhibit.**

If a hearing is required, or if the Court otherwise orders, the filer shall provide the complete exhibit or attachment to the Court in such format as the Court directs and in the time frame directed by the Court. Exhibits introduced into evidence in relation to any contested matter will still be governed by L.B.R. 9072-1.

In all cases or proceedings the filer shall provide the opposing party or the objecting party with a complete set of the exhibits and/or attachments.

Guideline No. 13 - Filing of Ballots in Chapter 9 and Chapter 11 Cases

Ballots shall be filed with the attorney of record for the Chapter 9 and Chapter 11 plan proponent for the purpose of providing the court with a total ballot count. The attorney will then provide to the Clerk of Court a statement attesting to the total ballot count electronically.

Guideline No. 14 - Depositions and Interrogatories

These documents are governed generally by the applicable Federal Rules of Civil Procedure as incorporated in Federal Rules of Bankruptcy Procedure Part VII and in accordance with L.B.R. 7026-1.

Guideline No. 15 - Public Access to Court Electronic Records (PACER)

The public will have access to electronic case records at the U. S. Bankruptcy Court at both Memphis and Jackson via public terminals provided at the Clerk's Office locations, at no charge, during regular business hours.

Although any person can retrieve and view electronically filed documents within the system and access information from it without charge at the Clerk's Office(s), electronic access to the system for viewing purposes is otherwise limited to subscribers to the Public Access to Court Electronic Records (PACER) system and, in accordance with the ruling of the Judicial Conference of the United States, a user fee will be charged for accessing certain detailed case information, such as reviewing filed documents and docket sheets.

The public may access the electronic filing system at the court's internet site, ecf.tnwb.uscourts.gov, by obtaining a PACER login and password. Information regarding subscribing to PACER is available at the PACER Website at www.pacer.psc.uscourts.gov. A person who has PACER access may retrieve docket sheets and documents. Only an attorney who has been issued a password or an entity which has been issued a limited use password may file documents electronically.

Paper Copies and Certified or Exemplified Copies of electronically filed documents may be purchased at the Office of the Clerk. The fee for copying and certification will be in accordance with the Judicial Conference Bankruptcy Court Miscellaneous Fee Schedule accompanying 28 U.S.C. §1930(b). Fee information may be found on our website at www.tnwb.uscourts.gov.

Guideline No. 16 - Technical Failure

A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the Court.

Guideline No. 17–Motion Practice and Service of Motions

A. Submission of Motions, Applications and Objections. All motions, applications and objections shall be submitted in electronic format (by ECF, or on CD or diskette) with the conformed signature (“/s/ *Jane Q. Attorney*”) or electronic facsimile signature of the attorney for the movant or applicant, or if unrepresented, the signature of the moving party or applicant. All motions, applications and orders shall contain a certificate of service listing the names and complete mailing addresses (including, as applicable, the telecopy number and/or e-mail address) of each person served with a copy of the motion, application or objection indicating the date and manner of service.

B. Service of Motions, Applications and Objections. Motions, applications and objections may be served by the moving party, applicant, or attorney by any means including mail, e-mail, telecopy or hand delivery, unless the Federal Rules of Bankruptcy Procedure specify the manner of service. *See* FED. R. BANKR. P. 7004. All motions, applications and objections shall be accompanied by a copy of the “Notice of Electronic Filing” received upon electronically filing the document. *See* Guideline No. 8 - Certificate of Service. Service shall be completed within one business day of the electronic filing.

C. Notices of Hearings. Upon receipt, the bankruptcy court clerk will set the motion or application for hearing, if a hearing is required. The clerk will prepare a notice of hearing or of opportunity for hearing, which may contain a deadline for response or objection. The clerk shall serve the notice upon those persons listed in the certificate of service.

Guideline No. 18 – Adversary Proceeding Practice

A. Filing of Complaints. All complaints shall be filed in electronic format (by ECF, or on CD or diskette) and shall be accompanied by an adversary proceeding cover sheet, also in electronic format, as a separate PDF document, and payment of the required filing fee. *See* Appendix to 28 U.S.C. § 1930 Bankruptcy Court Fee Schedule; and Guideline No. 3. The adversary proceeding cover sheet shall contain the names and complete addresses of all defendants and their attorneys, if known. This information will be used in the preparation of summonses.

B. Preparation and Issuance of Summons. Upon the filing of an adversary complaint, the bankruptcy court clerk shall prepare one summons for each defendant using the information provided by the plaintiff in the adversary proceeding cover sheet. The summons shall bear the electronic signature of the clerk, the seal of the court, and the date of issue. The summons may include a date for an initial pre-trial, or scheduling, conference. The clerk shall electronically

transmit the summons to the plaintiff's attorney, or if unrepresented, to the plaintiff, for service.

C. Service of Process. Service of process shall be made as required by FED. R. BANKR. P. 7004. Proof of service as required by FED. R. CIV. P. 4(m) shall be filed electronically. The complaint and summons shall be accompanied by a copy of the "Notice of Electronic Filing." *See* Guideline No. 8.

D. Service of Complaints for Turnover of Property. Because hearings on complaints for the turnover of property may be expedited (*see* Local Bankruptcy Rule 9075-1(d)), upon the filing of a complaint for turnover, the plaintiff's attorney, or if unrepresented, the plaintiff, shall serve a copy of the complaint upon the defendant (and the defendant's attorney if known), immediately after filing. The complaint shall be accompanied by a copy of the "Notice of Electronic Filing." *See* Guideline No. 8. If electronic or telecopy service is not available, the filing attorney or plaintiff shall telephone the defendant to advise of the filing of the complaint. The complaint for turnover of property shall contain a certificate of service listing the names and complete addresses (including, as applicable, the telephone number, telecopy number and/or e-mail address) of each person served with a copy of the complaint indicating the date and manner of service.

E. Notices of Hearing on Complaints for Turnover of Property. Upon the filing of a complaint for turnover of property, the bankruptcy court clerk shall set the complaint for hearing and provide electronic or paper notice of the hearing to the debtor, the debtor's attorney, the trustee, and any other persons listed on the certificate of service provided by the plaintiff.

Guideline No. 19 -- Forms

The bankruptcy court clerk shall make available for download copies of all forms referenced by these guidelines. The address of the court's web site is www.tnwb.uscourts.gov.

Guideline No. 20 -- Electronic Certification

The electronic signing and submission of any petition, pleading, motion, application or other document, other than a list, schedule or statement, shall constitute the certification required by FED. R. BANKR. P. 9011.